

LFC Requester:**Connor Jorgensen**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 23, 2016

Bill No: HB 155-305

Sponsor: Rep. Matthew McQueen

Agency Code: Attorney General's Office

Short

Person Writing Jennifer Armijo Hughes, AAG

Title: Public Corruption Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

House Bill 155 is an act relating to public officials which creates the “Public Corruption Act”. Upon conviction of the Public Corruption Act, a public official faces a fine and becomes ineligible to receive a pension, in addition to the penalties of the specific crime they are convicted of.

Section 2 defines “public official” as a person campaigning for or elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by the act.

Sections 3, 4, 5, and 6 define the prohibited acts and set forth the penalties faced by a public official who commits the crime of fraud, embezzlement, extortion, and forgery, respectively. Both the definition and penalty for each crime are identical to the respective definition and penalty found in Chapter 30 of the Criminal Code, with the exception that it applies to a public official as defined in the Public Corruption Act.

Sections 7, 8, and 9 define the prohibited acts and set forth the penalties faced by a public official who commits the crime of paying or receiving money for services not rendered by a public official, making or permitting a false public voucher by a public official, and unlawful interest in a public contract by a public official, respectively. Both the definition and penalty for each crime are identical to the respective definition and penalty found in Chapter 30 of the Criminal Code, with the exception that it applies to a public official as defined in the Public Corruption Act.

Sections 10, 11, 12, and 13 define the prohibited acts and set forth the penalties faced by a public official who commits the crime of bribery of a public officer or a public employee by a public official, demanding or receiving a bribe by a public official, bribery or intimidation of or retaliation against a witness by a public official, and acceptance of a bribe by a witness who is a public official. Both the definition and penalty for each crime are identical to the respective definition and penalty found in Chapter 30 of the Criminal Code, with the exception that it applies to a public official as defined in the Public Corruption Act.

Section 14, 15, 16 and 17 define the prohibited acts and set forth the penalties faced by a public

official who commits the crime of perjury by a public official, tampering with public records by a public official, soliciting or receiving a kickback, bribe or rebate by a public official and offering or paying a kickback, bribe or rebate by a public official. Both the definition and penalty for each crime are identical to the respective definition and penalty found in Chapter 30 of the Criminal Code, with the exception that it applies to a public official as defined in the Public Corruption Act.

Section 18, 19, 20, 21, 22 and 23 state that felony violations of the Racketeering Act, Computer Crimes Act, Money Laundering Act, Governmental Conduct Act, Procurement, Code, and Election Code, respectively, committed by a public official constitute a crime under the Public Corruption Act.

Section 24 includes the crime of conspiracy to commit a violation of the Public Corruption Act.

Section 25 outlines the penalties and sentencing that may be imposed on any public official found guilty of a crime enumerated under the Public Corruption Act. In addition to those penalties prescribed in the particular crime, additional penalties include the following: (1) a fine; and (2) forfeiture of the person's pension under the Public Employees Retirement Act.

Sections 26, 27, and 28 amend NMSA 1978, §§30-23-6, 30-24-2 and 30-26-1 of the Criminal Code, respectively, to exclude "public officials" as defined in the Public Corruption Act, from the definition of "public officer."

Section 29 repeals NMSA 1978, §31-18-15.4.

Section 30 makes July 1, 2016 the effective date of the provisions.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Sections 18, 19, 20, 21, 22, 23, and 24 do not contain a penalty for the respective violation. It should be clearly stated in each section whether a conviction of the respective crime is a misdemeanor or felony and the specific degree.

To the extent that the bribery provisions of HB 155 specifically relate to legislators, there may be a conflict with Article IV, Sections 39 and 40 of the New Mexico Constitution. Article IV, Section 39 defines bribery, as it related to legislators, and Article IV, Section 40 states that a legislator convicted of bribery "shall be deemed guilty of a felony and upon conviction shall be punished by fine of not more than one thousand dollars or by imprisonment in the penitentiary for not less than one nor more than five years." N.M. Const. art. IV, § 40; See e.g. State v. Olguin, 1994-NMCA-050, ¶ 8, 118 N.M. 91, 879 P.2d 92 aff'd in part, set aside in part, 1995-NMSC-077, 120 N.M. 740, 906 P.2d 731.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 155 relates to HB 96 to the extent that a public official who is convicted of a crime under the Public Corruption Act would be required to forfeit his or her pension under the Public Employees Retirement Act.

TECHNICAL ISSUES

The Criminal Code defines “public officer” as any elected or appointed officer of the state or any of its political subdivisions...whether or not he receives remuneration for his services.” NMSA 1978, § 30-1-12(I). If the intent is to exclude “public officials” covered under the Public Corruption Act from any duplicative and/or conflicting provision in the Criminal Code, it may be best to amend the definition of “public officer” found in the Criminal Code to explicitly exclude “public officials.”

Section 7, Subsection B should include the phrase “public officials” in addition to public officers and public employees.

OTHER SUBSTANTIVE ISSUES

HB 155 should specify what agency is able to prosecute violations of the Public Corruption Act, such as the District Attorney, the Attorney General or other entity.

HB 155 relies exclusively on a list of enumerated crimes which it defines as corruption offenses. It does not contain a catch-all for all other crimes committed in connection with public employment. That means that, for example, a public official who commits a sex act on the job would not necessarily lose his or her pension benefits. In that hypothetical, the pension would only be forfeited if the facts somehow supported a covered crime such as extortion or intimidation of a witness.

Further, only some of the enumerated crimes necessarily include a connection to public employment (receiving a bribe as a public employee for example). Others are more general without requiring any additional finding of connection to public employment. This means the bill leaves open the possibility that an elected official could lose his or her pension for committing a crime that has nothing to do with his or her position. For an example, if an official runs an unrelated business and commits a fraud in the course of that business, pension benefits would be lost.

Additionally, other than the additional fines and possibility of losing a pension, there are no increased penalties for the enumerated crimes in the Public Corruption Act.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A